

NOTICE REGARDING AMENDMENTS TO FLOATING ZONE PLANS, DEVELOPMENT PLANS OR SCHEMATIC DEVELOPMENT PLANS

On March 4, 2014, the Council voted to approve a new Zoning Ordinance, effective October 30, 2014 (Ordinance No.: 17-43; Zoning Text Amendment No.: 13-04) ("New Zoning Ordinance"), which was amended on September 30 2014, in Zoning Text Amendment 14-09 (Ord. No. 17-52).

For rezoning applications filed after October 29, 2014, the New Zoning Ordinance eliminates the two plans (a Development Plan (DP)) or a Schematic Development Plan (SDP)) that previously accompanied applications for floating zones and created a single plan, a Floating Zone Plan (FZP), to be approved with these applications. The New Zoning Ordinance also permits amendments to Floating Zone Plans (FZPA) and sets procedures for these amendments.

Applicants who have a previously approved DPs or SDPs may apply for amendments to those plans under the old Zoning Ordinance until October 30, 2039. Applications for a Development Plan Amendment (DPA) or Schematic Development Plan Amendment (SDPA) for a plan approved prior to October 30, 2014, are governed by the previous Zoning Ordinance, pursuant to Section 59-7.7.1.B.1 of the New Zoning Ordinance, with certain exceptions specified in Sections 7.7.1.B.3. and 7.7.1.C.

To implement the new Zoning Ordinance, the Council also adopted new filing fees for FZPAs, DPAs, and SDPAs (Resolution No. 17-1168) and approved new Rules of Procedure to govern all OZAH proceedings in zoning matters (Resolution No. 17-1249). The new fee schedule and the new rules are set forth on this website.

This notice sets forth administrative procedures for amending an FZP. Procedures for amending DPs and SDPs are listed under a separate heading. Applicants for any of these plan amendments must submit four sets of its application and documents to Montgomery County Planning Department, at 8787 Georgia Avenue, Silver Spring, (301) 495 - 4610, for its assessment and certification of completeness. *Twenty - five percent of the filing fee approved by the District Council must be paid directly to the Planning Department when the application is submitted for verification of completeness.* Payment of the remaining 75% of the filing fee and the entire sign fee must be included with the application when it is filed with OZAH. Once Planning Staff certifies completeness of the application, the Applicant must file the certified original and fees with OZAH, which will accept the application and establish a hearing date. OZAH will maintain the original certified application and the record of the case; three complete copies of the application will be retained by M - NCPPC Technical Staff for its review and recommendation.

Forms and checklists for an FZPA application follow this notice.

Please note that, for FZPAs, Applicants need only provide a list of abutting and confronting property owners and civic associations within ½ mile of the property. Unlike plan amendments under the old Zoning Ordinance, FZPA Applicants need not notify owners and associations that the application has been filed. Instead, OZAH must send notice of the public hearing within five days of filing the application with OZAH.

OZAH CHECKLIST FOR FLOATING ZONE PLAN AMENDMENT (FZPA)
(Revised 9/30/14)

Requirements for Floating Zone Plan Amendment (FZPA) Applications:

Section 7.2.1.I. of the 2014 Zoning Ordinance authorizes two ways to amend a floating zone plan (FZP):

- 1. A major amendment to an approved floating zone plan follows the same procedures as an original application. A major amendment includes any request to increase density or height, add a previously disallowed use, decrease a setback, or make a change to any binding element of approval.**
- 2. At site plan, the Planning Board may approve an amendment to an approved floating zone plan that does not increase density or height, add a previously disallowed use, decrease a setback, or change any binding element.**

Applicants who have a Development Plan (DP) or Schematic Development Plan (SDP) approved prior to October 30, 2014, through a Local Map Amendment may apply, until October 30, 2039, for amendments to their DP or SDP under the procedures in effect on October 29, 2014 (*i.e.* under the pre-2014 Zoning Ordinance), if they meet conditions spelled out in Sections 7.7.1.B.5. and 7.7.1.C of the 2014 Zoning Ordinance.

For a major amendment to an FZP, Applicant must submit four sets of its application and documents to the Maryland-National Capital Park and Planning Commission (M-NCPPC) Technical Staff, at 8787 Georgia Avenue, Silver Spring, (301) 495-4610, for its assessment and certification of completeness. *Twenty-five percent of the filing fee approved by the District Council must be paid directly to the Planning Department when the application is submitted for verification of completeness.* Payment of the remaining 75% of the filing fee and the entire sign fee approved by the District Council must be included with the application when it is filed with OZAH. Once Technical Staff certifies completeness of the application, the Applicant must file the certified original and fees with the Office of Zoning and Administrative Hearings (OZAH), which will accept the application and establish a hearing date under Section 7.2.1.C. of the 2014 Zoning Ordinance. OZAH will maintain the original certified application and the file; three complete copies of the filing will be retained by M-NCPPC Technical Staff for its review and recommendation on the merits.

As provided in Section 7.2.1.B.1. of the 2014 Zoning Ordinance, the applicant must be (1) a government agency, (2) the owner of the subject property, or (3) a person authorized by the owner to file the application. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, the applicant must submit written authorization from that entity or agency with the application.

The documents to be submitted by Applicant are:

- 1. An application form and fees approved by the District Council. The application must show the name and address of applicant, lot and block and/or subdivision, address of the property, tax account number(s), the election district and the present zoning. If the applicant is not the owner, documents showing the applicant's authorization to file the application.**
- 2. The identity of each person who has a substantial interest in the property under the application, including any person with a share in the property amounting to 5% or more (whether**

held in an individual or corporate capacity) of the full cash value of the property after subtracting all mortgages, deeds of trusts, liens, and encumbrances. The application must also contain the names of any contract purchaser or person holding a mortgage, deed of trust, or option to purchase the property.

3. A statement disclosing political contributions to the treasurer or political committee of any candidate for County Council and County Executive or slate that contributes to candidates for County Council or County Executive, under State law. The applicant must submit the disclosure statement on a form approved by the District Council.

4. A statement explaining how the proposed FZP amendment satisfies the criteria to grant the application. The applicant's statement should also contain a summary of what the applicant expects to prove, including the names of applicant's witnesses, summaries of the testimonies of expert witnesses, and the estimated time required for presentation of the applicant's case. The statement must address how the application conforms with any other existing approvals that will not be amended by the FZP.

5. List of Adjoining and Confronting Property Owners and a list of civic organizations and homeowners associations within a half mile of the site. If an adjoining or confronting property is a condominium, the applicant may provide the name and address of the Council of Unit Owners rather than individual condominium owners.

6. Certified Zoning Map (Vicinity): needs certification stamp & property highlighted

7. Identification Plat certified by surveyor, and **plat acreage must match the application exactly**; verify that Identification Plat has surveyor/engineer stamp, signed and dated by surveyor, and **property must be highlighted**.

8. A description by metes and bounds, courses and distances of land or, if the boundaries conform to lot boundaries within a subdivision for which a plat is recorded in the land records of the County, then the lot, block, and subdivision designations with appropriate plat reference.

9. The currently approved FZP, Development Plan (DP) or Schematic Development Plan (SDP).

10. The proposed amended Floating Zone Plan (FZP) depicting:

- i. building location, density, massing, height, and anticipated use;
- ii. locations of open spaces and preliminary stormwater management strategy;
- iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;
- iv. any binding element on the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and
- v. the following additional information:
 - (a) current zone;
 - (b) a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;

- (c) existing or approved adjacent land uses, buildings, and rights-of-way;
- (d) a Traffic Study under the Planning Board's LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and
- (e) general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications.

11. A "redline" version of the proposed amended FZP (or proposed amended DP or SDP, if footnote 1 applies), highlighting the changes proposed from the current FZP, DP or SDP.

12. In addition to hard copies, applicants must submit, with their applications, electronic copies on a compact disc or DVD of all the materials required above. Hard copies and electronic copies must also be submitted of any changes in these materials at least 10 days prior to the hearing. Electronic copies must be submitted in Microsoft WORD format for text documents, and in PDF format for plans, photos and other non-text documents.

Application No. _____
Filed _____

**Application for Floating Zone Plan Amendment
Montgomery County, Maryland**

Name of Applicant

Tel. No.

Email Address

Address: _____

makes application with the County Council for Montgomery County, Maryland, sitting as a District Council for that portion of the Maryland-Washington Regional District within Montgomery County, for the amendment of the Floating Zone Plan, Exhibit No. _____, in Local Map Amendment Application No. _____, approved by the County Council on _____.

Concise Description of the Floating Zone Plan Amendment

Location of Property: _____

Tax Account #: _____

Acreage: _____

Existing Zoning: _____

1. The most recent Floating Zone Plan (including amendments to the original Floating Zone Plan) proposed (list uses, density, setbacks, and height):

2. The requested Floating Zone Plan Amendment would make the following change(s):

This application for a Floating Zone Plan Amendment includes a copy of the certified approved Floating Zone Plan in LMA Application No. _____ and all information required by Section 59-7.2.1.B of the Zoning Ordinance and OZAH's Rules of Procedure (Council Resolution 17-1249).

Signature of Applicant

Signature of Attorney - *(Please print next to signature)*

Address of Attorney

Telephone Number

Email Address

<u>Completeness</u>	The Applicant must provide documentation from the Montgomery County Planning Department verifying that the application has been reviewed by the Department and is complete. Twenty-five percent of the filing fee approved by the District Council must be paid when the application is submitted to the Planning Department.
<u>Filing Fee</u>	This application must be accompanied by a check, drawn to the order of Montgomery County, Maryland, for 75% of the amount specified in the Fee Schedule of the Office of Zoning and Administrative Hearings (Resolution 17-1168.) The fee may be refunded only for the reasons set forth in §59-7.6.5.B of the Zoning Ordinance.
<u>Initial Copies</u>	The Applicant shall submit four copies of the completed application to Planning Staff for certification that the application is complete. The application should include all documents required for Floating Zone Plan and the previously approved and certified Floating Zone Plan.
<u>Posting of Sign</u>	The Applicant is required to post the property covered by this application, with a sign provided by this office, within 5 days of the acceptance for filing of the application pursuant to Section 59-7.5.2.C.1. There is a fee of \$200 per sign, of which \$100 is refundable if the sign is returned in usable condition. The Applicant is required to submit an affidavit of posting, on a form provided by this office, prior to the public meeting held by the Planning Board. Signs must remain posted until 10 days after issuance of the Hearing Examiner's Report, or, if oral argument is requested, 30 days after a final decision in the case.
<u>Notice to Owners</u>	The Applicant is required to provide a written list of abutting and confronting property owners and civic and homeowners associations within ½ mile of the property pursuant to Section 59-7.5.1 of the New Zoning Ordinance. For condominiums, the Applicant must submit the address of the Council of Unit Owners.
<u>Certification</u>	The Applicant, within 10 days after Council approval of a floating zone plan amendment and prior to submittal of a subdivision or site plan, must submit to this office a reproducible original and 3 copies of the floating zone plan amendment approved by the Council. The Certification must read as follows:

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

CERTIFICATION

This is a true copy of the Floating Zone Plan Amendment (Exhibit No. ____)
approved by the District Council on _____, 20____, in Application
No. _____, by Resolution No. _____.

Hearing Examiner

Dated: _____, 20____.

<u>Covenants</u>	The Applicant must submit an executed covenant prior to the close of the record of the public hearing stating that development of the property will conform to the binding elements of the Floating Zone Plan Amendment. The covenants must be in a format suitable for filing in the land records of Montgomery County, Maryland. Form covenants are located on OZAH's website under Local Map Amendment applications.
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**FLOATING ZONE PLAN AMENDMENT APPLICATION
DISCLOSURE STATEMENT**
(Revised October 14, 2014)

State law requires that each and any Applicant for a local zoning map amendment, or Party of Record, who has made a contribution to a candidate for County Executive or County Council of \$500.00 or more, calculated cumulatively for the four-year election cycle either before the filing of the application or during the four-year cycle within which the application is pendent, must disclose the name of the candidate to whose treasurer, political committee, or slate the contribution was made, the amount and the date of the contribution.

A Disclosure Statement must be filed when the application is filed or within two weeks after entering the proceeding by a Party of Record and be updated within 5 business days of any contribution made after the filing of the initial disclosure and before final disposition of the application by the District Council. If more than one contribution is made, please specify in the space provided below each contribution and to whom it was made. **If more than one applicant is involved in a single application, each applicant must file this statement.**

Subject to the penalties of perjury, I, _____
(NAME OF APPLICANT FOR FLOATING ZONE PLAN
AMENDMENT OR PARTY OF RECORD)

HEREBY AFFIRM that the contents of this statement are true to the best of my knowledge, information and belief, and that: (SELECT EITHER 1 OR 2 BELOW AND CHECK APPROPRIATE STATEMENT)

☐ 1. I HAVE made a contribution of _____
(FILL IN AMOUNT OF CONTRIBUTION IF \$500 OR
MORE, OR STATE N/A IF NOT APPLICABLE)

on _____
(FILL IN DATE (MONTH, DAY AND YEAR) OF CONTRIBUTIONS),

to the following candidate's treasurer, political committee, or slate:

(FILL IN NAME OR NAMES OF CANDIDATE, OR STATE N/A IF INAPPLICABLE)(If more
space is required, use the back of this form.)

☐ 2. I HAVE NOT made a contribution requiring disclosure.

SIGNATURE OF DECLARANT

This Statement is filed in compliance with the public ethics requirements of Md. Code Ann, General Provisions, §§5-842 through 5-845; 2014 Md. Laws Ch. 94. Any violations of these provisions is a misdemeanor, and upon conviction, is subject to a fine of not more than \$1,000.

Subscribed and sworn to me, a Notary Public for Montgomery County, Maryland, this

_____ day of _____, 20 ____.

NOTARY PUBLIC

My Commission Expires:

For your convenience, some definitions are included on the reverse side of this form.

Md. Code Ann., Gen. Prov. §5-842

(B) Applicant.

(1)(I) “Applicant” means an individual or business entity that is:

1. a title owner or contract purchaser of land that is the subject of an application;
2. a trustee who has an interest in land that is the subject of an application, excluding trustees described in a mortgage or deed of trust; or
3. a holder of 5 percent or greater interest in a business entity who has an interest in land that is the subject of an application.

(II) “Applicant” includes, if the applicant is a corporation, the directors and officers of the corporation that actually holds title to the land, or is a contract purchaser of the land, that is the subject of an application.

(2) “Applicant” does not include:

- (I) a financial institution that has loaned money or extended financing for the acquisition, development, or construction or improvements on the land that is the subject of an application;
- (II) a municipal or a public corporation;
- (III) a public authority;
- (IV) a public service company acting within the scope Division I of the Public Utilities Article; or
- (V) a person who is hired or retained an accountant, an attorney, an architect, an engineer, a land use consultant, an economic consultant, a real estate agent, a real estate broker, a traffic consultant, or a traffic engineer.

* * *

(E) “Candidate” means an individual who wins an election to the Office of County Executive or County Council of Montgomery County.

* * *

(F) (1) (I) “Contribution” means:

- (1) A payment or transfer of money or property of \$500 or more, calculated cumulatively during a 4-year election cycle, to the treasurer of either a candidate or a political committee.
- (2) The incurring of any liability or promise of anything of value of \$500 or more, calculated cumulatively during a 4-year election cycle, to the treasurer of either a candidate or political committee.

(II) “Contribution” includes a payment or transfer to a slate with which a candidate is associated.

(2) (I) Except as provided in subparagraph (II) of this subsection, the \$500 cumulative threshold contribution is calculated separately as to each candidate or elected official.

(II) For purposes of this subtitle, a cumulative contribution of \$500 or more to a slate is fully attributed to each candidate on the slate.

**AFFIDAVIT OF POSTING
FLOATING ZONE PLAN AMENDMENT APPLICATION**

I HEREBY CERTIFY that I placed or caused to be placed upon the property that is the subject of F Z P A Application No. _____ the sign(s) furnished by the Office of Zoning and Administrative Hearings (OZAH), that one sign was posted for every 500 feet of property frontage within five days the application was accepted for filing by OZAH, and that the sign has been continuously maintained to the date of hearing.

I understand that the sign is to be maintained in the same position for 10 days after a final decision in the case, including any appeals. I further understand that the Applicant is entitled to a refund of \$100 of the sign fee if the sign is returned to OZAH in reusable condition within 21 days of a final decision in the case. If the sign is not returned, the refund is forfeited.

APPLICANT

Subscribed and sworn to before me, a Notary Public for Montgomery County, Maryland, this
_____ day of _____, 20 __.

NOTARY PUBLIC

My Commission Expires: _____

**OFFICE OF ZONING AND
ADMINISTRATIVE HEARINGS FOR
MONTGOMERY COUNTY, MARYLAND**

Stella B. Werner Council
Office Building 100 Maryland
Avenue

Rockville, Maryland 20850

(240) 777-6660

NOTICE TO APPLICANTS PROPOSING TO AMEND BINDING ELEMENTS IN A FLOATING ZONE PLAN

Under the provisions of Zoning Ordinance §59-7.2.1.B.2.e.iv., an applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application. Forms of acceptable covenants may be found on OZAH's website (under LMA applications).

Under the provisions of Zoning Ordinance §59-7.2.1.F.3.a,

- a. Before the close of the administrative record the applicant must submit to the Hearing Examiner an executed covenant that reflects any restriction on the development standards, development program, or use in the approved floating zone plan.
- b. The executed covenant must also state that the restricted development standards, development program, or use remain in full effect until the property is rezoned or the floating zone plan is amended and an amended covenant is executed and recorded.
- c. The applicant must file the executed covenant in the land records of Montgomery County within 10 days after approval of the application by the District Council and submit certification of such filing to the Planning Board with the site plan application. The Planning Board must not accept a site plan application without this certification.

In order that the covenants contain enough information to meet the objectives of the Zoning Ordinance, the following minimum provisions must be included:

1. executed by all persons having a property interest, including both contract purchasers and property owners;
2. bind all successors in interest and run with the land, unless the property is rezoned to another classification or the development plan modified by the District Council;
3. contain a complete and accurate description of the subject property;
4. incorporate by reference any applicable floating zone plan, by exhibit number, and specify with particularity all binding elements of the plan, or in the absence of a plan, all binding elements pertaining to the application;
5. contain a provision that enures to the benefit of Montgomery County and provides that the covenants may be enforced by the County or other appropriate government agencies; and
6. contain a provision that amendments to the covenants may only be made by the declarant or successors in interest to conform with modifications approved by the District Council or other appropriate government agencies.

NAME	ADDRESS	LOT	BLOCK
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[illegible]